

United States
Circuit Court of Appeals
For the Ninth Circuit.

COLLIN MURRAY,

Appellant,

vs.

SIOUX ALASKA MINING COMPANY, a Corporation, H. M. SMITH, HASTINGS CREEK DREDGING COMPANY, a Corporation, and JOSEPH BELLEVIEW,
Appellee.

Transcript of Record.

Upon Appeals from the United States District Court for the District of Alaska, Second Division.

Filed

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F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of] Attorneys of Record.

WILLIAM A. GILMORE, Nome, Alaska,

T. M. REED, Nome, Alaska,

Attorneys for Plaintiff.

G. J. LOMEN, Nome, Alaska,

Attorney for Defendants, Joseph Belleview

and Sioux-Alaska Mining Co. [1*]

*In the District Court for the District of Alaska,
Second Division.*

[Minutes of Court—July 3, 1915—Re Opinion, etc.]

TERM MINUTES, Special 1915 Term, Beginning
January 11, 1915.

Saturday, July 3, 1915, at 10 A. M.

Court convened pursuant to adjournment.

Honorable J. R. TUCKER, District Judge presiding.

Upon the convening of court, the following proceedings were had:

2602.

COLLIN MURRAY,

vs.

SIOUX-ALASKA MINING CO. et al.

Oral opinion announced, sustaining the motion to vacate the injunction and sustaining the demurrers of Joseph Belleview and Sioux-Alaska Mining Company, and denying plaintiff's motion for an injunction *pendente lite*.

William A. Gilmore, attorney for plaintiff, took exception to the ruling on each of the foregoing mat-

*Page-number appearing at foot of page of original certified Record.

ters. Exceptions allowed.

Counsel for plaintiff then gave notice of intention to take an appeal and asked that a sum be set for the supersedeas bond. After some argument by counsel as to the amount of same was taken under advisement.

On motion of counsel for plaintiff, thirty days granted in which to prepare and file bill of exceptions. Stay of proceedings granted in the interim. [1a]

*In the District Court for the District of Alaska,
Second Division.*

No. 2602.

Bill of Exceptions.

COLLIN MURRAY,

Plaintiff,

vs.

SIoux-ALASKA MINING CO., a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO., a Corporation, and JO-
SEPH BELLEVIEW,

Defendants.

BE IT REMEMBERED that on the 15th day of June, 1915, a complaint was filed herein by the plaintiff in words and figures as follows: (Title of court and cause omitted in all papers herein contained, being in all cases the same as the title of the court and cause of this Bill of Exceptions.)

Complaint.

[Title of Court and Cause.]

Comes now the plaintiff above named and for cause of action against the above-named defendants alleges as follows:

I.

That the defendant Sioux-Alaska Mining Company, is a corporation organized and existing under and by virtue of the laws of the State of South Dakota and at all times herein mentioned was and is authorized to do business in the District of Alaska and in the Second Division thereof.

II.

That the defendant, Hastings Creek Dredging Company is and was at all times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of Illinois and authorized and doing business in the District of Alaska, in the Second Division thereof. [2]

III.

That between the first day of March, 1910, and the first day of May, 1912, the plaintiff, at the instance and request of the defendant, Sioux-Alaska Mining Company, performed services at an agreed and reasonable value, and advanced certain monies for expenses for said defendant, amounting in all to the total sum of Three Thousand, Eight Hundred Ninety-five and 93/100 (\$3,895.93) Dollars, and thereupon the plaintiff demanded payment of said amount from said defendant, which said defendant refused, and ever since has refused, to pay the same

or any part thereof. That there is now due and owing from said defendant Sioux-Alaska Mining Company to the plaintiff for said services and cash advanced at its instance and request, the sum of **THREE THOUSAND EIGHT HUNDRED NINETY-FIVE** and $93/100$ (\$3,895.93) DOLLARS, together with interest thereon at the legal rate of eight per cent (8%) per annum from said first day of May, 1912, to date, said interest amounting to the sum of nine hundred seventy-three and $47/100$ (\$973.47) dollars, being the total sum of **FOUR THOUSAND EIGHT HUNDRED SIXTY-NINE AND $40/100$** (\$4,869.40) Dollars.

IV.

That on or about the —— day of ——, 1912, the said defendant Sioux-Alaska Mining Company made, executed and delivered a certain bill of sale to the defendant H. M. Simth of a certain bucket dredge then owned by said company and located on Moss Gulch, a tributary of Nome River, in the Cape Nome Mining & Recording District, District of Alaska, and which was subsequently removed to and is now lying and being on Hastings Creek in the Cape Nome Mining & Recording District, Alaska, the said transfer being made as security to said H. M. Smith for the payment of the sum of fifty-five hundred (\$5,500) dollars borrowed by said defendant from the said H. M. Smith on or about said time. That subsequently the said H. M. [3] Smith sold the said dredge to one W. H. Knowles and one A. M. Hansen for the sum of Fifteen Thousand (\$15,000) Dollars, receiving from the said Knowles and Hansen the sum

of Six Thousand (\$6,000) Dollars, which said sum was applied by the said H. M. Smith in payment of the said loan and indebtedness of the said Sioux-Alaska Mining Company to him, the said H. M. Smith. That at the time the said bill of sale was made by said Sioux-Alaska Mining Company, to the said H. M. Smith, it was distinctly understood and agreed between the parties thereto that the said H. M. Smith should act as the Trustee for said Sioux Alaska Mining Company and hold the legal title by said bill of sale to the said dredge and that all of the proceeds from the sale or disposal thereof above the sum of fifty-five hundred (\$5,500) dollars should be paid immediately thereafter upon the receipt of the same to the said Sioux-Alaska Mining Company. That at the time the said bill of sale was made, the said Sioux-Alaska Mining Company had no other property, real or personal, save and except a few worthless and worked-out mining claims on the said Moss Gulch above mentioned, which said mining claims, the plaintiff is informed and believes, have since been allowed to forfeit and have been abandoned by the said defendant. That said defendant Sioux-Alaska Mining Company is totally and wholly insolvent and has no assets or property, real or personal, other than this equitable interest in the proceeds from the said mortgage held by the said H. M. Smith above alleged.

That thereafter and during the month of December, 1914, the said H. M. Smith, in an equitable action entitled H. M. Smith, plaintiff, versus W. H. Knowles and A. M. Hansen, et al., defendants, in the

above-entitled court, commenced a foreclosure proceeding to collect the balance due on said mortgage from the said Knowles and Hansen and obtained a decree of foreclosure in his favor. That the said H. M. [4] Smith, as such plaintiff, has obtained an execution and under the execution decree of the court has sold all of the right, title and interest of the said Knowles and Hansen in said dredge, and on this, the 15th day of June, 1915, purchased at marshal's sale all of the right, title and interest of said parties in and to the said dredge.

That at all the times herein mentioned the said H. M. Smith was acting as trustee for said Sioux-Alaska Mining Company and all of the acts and actions on the part of said H. M. Smith were authorized and conducted in the name of said H. M. Smith for and on behalf of said insolvent corporation.

That on the 2d day of March, 1915, the said H. M. Smith, acting in his own name for said defendant Sioux-Alaska Mining Company, entered into a written agreement with the defendant Joseph Belleview for and on behalf of himself and said defendant Hastings Creek Dredging Company, a corporation, the exact terms and conditions of said agreement being unknown to the plaintiff, but the plaintiff is informed and believes that the said Joseph Belleview, for and on behalf of himself and the said Hastings Creek Dredging Company, agreed to pay to the said H. M. Smith for the defendant Sioux-Alaska Mining Company the sum of SEVEN THOUSAND (\$7,000) DOLLARS for said dredge as soon as the said H. M. Smith could complete the foreclosure proceedings

and deliver title to said dredging machine.

That said H. M. Smith, for and on behalf of said defendant Sioux-Alaska Mining Company, is about to deliver the possession and title of said dredge to the said Joseph Belleview and Hastings Creek Dredging Company, and the said Belleview and Hastings Creek Dredging Company are about to pay, or cause to be paid, to said H. M. Smith for the said Sioux-Alaska Mining Company, the consideration therefor, to wit, the sum of Seven Thousand (\$7,000) Dollars.

[5]

V.

That the said H. M. Smith is a nonresident of the District of Alaska and resides in the State of South Dakota. That said Joseph Belleview is a resident of the town of Nome, Alaska, and is now in the town of Nome, Alaska, or vicinity. That the representatives of all of the other defendants are within the jurisdiction of the court and accessible to service or process. That it is impossible for the plaintiff herein to get service on said H. M. Smith or to bring him within the jurisdiction of the Court or the equity process of the Court. That the said Sioux-Alaska Mining Company purposely, deliberately, fraudulently and designedly chose and selected the said H. M. Smith as its trustee so as to prevent the plaintiff herein from compelling the said Smith to account in the district where the said dredge is located. That the plaintiff has been trying to collect the money due him from the said defendant Sioux-Alaska Mining Company ever since May, 1912, and by reason of the fact that said defendant has no property, real

or personal, and by reason of the fact that said insolvent defendant has placed its personal property in the name of said H. M. Smith, it was impossible for the plaintiff to reach the said defendant by any legal process permitted or allowed by law. That it is now impossible, by legal process, to attach, garnish, or reach the said proceeds of the said sale and unless the court restrains the said defendants Belleview and Hastings Creek Dredging Company from paying said amount, or any part thereof, to the said H. M. Smith, or the said defendant Sioux-Alaska Mining Company, said fund will be paid over by the said Belleview and Hastings Creek Dredging Company and the same wasted and dissipated and placed beyond the reach of any legal process within the means of reach of this plaintiff. That it would be fruitless and involve useless and unnecessary expense for this plaintiff to commence and maintain any [6] action at law against the said Sioux-Alaska Mining Company because said defendant is insolvent and has no other assets or property of any kind or character other than this equitable claim to the said fund to be paid over by said defendants Belleview and Hastings Creek Dredging Company to said H. M. Smith for and on its behalf. That because and on account of all of said facts plaintiff files this creditor's bill instead of an action at law. That unless the Court grants the plaintiff an injunction enjoining said defendants as above alleged, the plaintiff will be unable to obtain any relief against the said Sioux-Alaska Mining Company.

WHEREFORE plaintiff prays the Court as follows:

First. For a judgment and decree of the Court against the defendant Sioux-Alaska Mining Company for the sum of FOUR THOUSAND EIGHT HUNDRED SIXTY-NINE and 40/100 (\$4,869.40) DOLLARS together with interest on the sum of \$3,895.93 from date until paid.

Second. For an injunction *pendente lite* restraining and enjoining defendants Joseph Belleview and the Hastings Creek Dredging Company from paying the said defendant H. M. Smith the consideration for the transfer and sale of said dredge mentioned in the complaint herein, or any part of said consideration, until the further order of the Court.

Third. That the said defendant H. M. Smith be adjudged to be the trustee of the defendant Sioux-Alaska Mining Company and on the final hearing of this case that the said H. M. Smith and the said defendants Joseph Belleview and Hastings Creek Dredging Company be ordered and compelled to pay the said consideration of Seven Thousand (\$7,000) Dollars, or so much thereof as may be due the plaintiff herein, into the registry of the Court for the satisfaction and payment of any decree obtained by the plaintiff herein.

Fourth. That the plaintiff do have and recover of and from the said Sioux-Alaska Mining Company all of his costs and disbursements [7] herein.

Fifth. That the Court grant such other and further order and relief in the premises as shall seem to

the Court meet and proper.

T. M. REED, and

WILLIAM A. GILMORE,

Attorneys for Plaintiff.

United States of America,

Territory of Alaska,—ss.

William A. Gilmore, being duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled cause. That he has read the above and foregoing complaint, knows the contents thereof and the same is true as he verily believes. That he makes this verification for and on behalf of the plaintiff because the said plaintiff is temporarily absent from the Second Division of the District of Alaska.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 15th day of June, 1915.

[Seal]

D. B. CHACE,

Notary Public for the Territory of Alaska, Residing at Nome.

(My commission expires May 12th, 1917.)

[Endorsed]: Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, June 15, 1915. G. A. Adams, Clerk.

BE IT FURTHER REMEMBERED that at the same time of filing said complaint the plaintiff thereupon filed the affidavit of William A. Gilmore, said affidavit being in words and figures as follows, to wit:

[8]

[Title of Court and Cause.]

United States of America,

Territory of Alaska,—ss.

Affidavit of William A. Gilmore.

William A. Gilmore being duly sworn on oath deposes and says: That he is one of the attorneys for the plaintiff Collin Murray in the above-entitled action.

That he has in his possession letters and statements showing that the defendant Sioux-Alaska Mining Company, a Corporation, is indebted to the said plaintiff in the sum demanded in the complaint. That affiant for the past two years has been employed by the plaintiff to take legal proceedings to collect the said amount from said defendant Sioux-Alaska Mining Company but on account of the fact that said Sioux-Alaska Mining Company is insolvent and has no assets and because affiant was unable to secure and take any legal proceedings allowed by law to reach any property belonging to said company, it has been impossible for the plaintiff to obtain any relief against the said defendant. That affiant knows of no legal process by which the fund described in the complaint can be reached and therefore has advised the plaintiff to commence an equitable action by filing a creditor's bill in order to obtain the injunctive relief of the Court enjoining the trust fund from being collected or paid over until the plaintiff can have his rights adjudicated.

That affiant is informed and believes that one H.

S. Sandvig of Baltic, So. Dakota, is the Secretary of the defendant Sioux-Alaska Mining Company, a cor. That annexed hereto and marked exhibit "A" and made a part of this affidavit is a letter from the said H. S. Sandvig to the plaintiff bearing date March 5th, 1915, wherein the said secretary of said defendant admits that the said defendant H. M. Smith has been paid the sum of Five Thousand (\$5,000) Dollars, and wherein the said secretary admits that said Smith is the trustee of [9] said defendant Sioux-Alaska Mining Company, a cor.

That affiant is acquainted with and knows one A. M. Hansen, a member of the partnership of Hansen & Knowles, who executed the mortgage described in the complaint. That yesterday, the 14th day of June, 1915, said A. M. Hansen, in the town of Nome, Alaska, informed affiant personally that in addition to said sum of five thousand dollars mentioned in said exhibit "A" annexed hereto that said Hansen & Knowles paid to the said Smith an additional sum of one thousand (\$1,000) dollars in two payments of five hundred dollars each, making more than the amount due the said Smith from the said Sioux-Alaska Mining Company, a cor. for said loan mentioned in the exhibit annexed hereto.

That affiant does not know of any other property, real or personal, belonging to or of any value whatever of the said defendant Sioux-Alaska Mining Company and knows of no other remedy by which the plaintiff herein can obtain justice other than by the equitable injunctive relief demanded in the plaintiff's complaint.

That affiant is informed and believes that the said H. M. Smith has already contracted and sold the said dredge to the said Joseph Belleview and the Hastings Creek Dredging Company, a cor. mentioned in the complaint and that as soon as the marshal's title is completed in the said H. M. Smith by reason of the execution and sale thereof, the said Belleview and Hastings Creek Dredging Co. will pay, or cause to be paid, the said note to the said H. M. Smith or the said Sioux-Alaska Mining Company in the State of South Dakota or elsewhere and remove the said fund beyond the jurisdiction of the Court

WHEREFORE affiant makes this affidavit for and on behalf of the plaintiff to inform the Court of the facts and to support the plaintiff's motion for an injunction enjoining said Joseph Belleview and Hastings Creek Dredging Company from paying said fund [10] to the said H. M. Smith or the said Sioux-Alaska Mining Company until this plaintiff's cause of action can be heard on its merits.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 15th day of June, 1915.

[Seal]

D. B. CHACE,

Notary Public for the Territory of Alaska, Residing at Nome.

(My commission expires May 12th, 1917.)

Exhibit "A" [to Affidavit of William A. Gilmore].
Baltic, S. Dakota, Mar. 5th, 1915.

Mr. Collin Murray,
Aberdeen, S. D.

Dear Friend:

I received your letter of recent date and see thereby that you are now in the Dakota Blizzard country.

You inquire about the Dredge proposition. This mining business got to be slow business. I thought we some time would get through with it, so that we could forget it, but it does not seem so.

A mortgage on the dredge was given Mr. Smith when we made that \$5,500 loan and last year the dredge was turned over to him in payment of this loan. Of course it is the understanding that he is to return to this Company what he get over on the indebtedness.

He sold the dredge for \$1,500. He has received \$5,000 and now they have gone bump and it doesn't seem that more can be done with them. He is now to turn it over to a party from Chicago, but the cash payment is small and it all depends on what the ground is that they are going to put it on.

If that first deal had gone through all right we would have got our assessments back and paid our debts, but now it doesn't [11] look so bright. There is still some balance due on that note to pay and also other indebtedness here of about \$800.

If these last parties have the ground we may get something yet, but otherwise we will be where we

are. This is the situation.

Your friend,
(Signed) H. S. SANDVIG.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. June 15, 1915. G. A. Adams, Clerk.

BE IT FURTHER REMEMBERED at the same time the plaintiff filed his motion for a restraining order, which said motion was in words and figures as follows, to wit:

[Title of Court and Cause].

Motion for Restraining Order.

Comes now the plaintiff by and through his attorneys and moves the Court for an injunction *pendente lite* against the defendants enjoining and restraining them from paying any part or portion of the consideration of the sale and transfer of that certain bucket dredge now located and situated on Hastings Creek in the Cape Nome Mining District, District of Alaska, and in the meantime for a restraining order so enjoining and restraining said defendants, and each of them, and particularly the defendants Joseph Belleview and Hastings Creek Dredging Company from paying any part or portion of said consideration of said transfer to the said defendant, H. M. Smith, or the defendant Sioux Alaska Mining Company, or anyone else on its behalf.

This motion is made and based upon the complaint herein and the affidavit of William A. Gilmore made, served and filed herewith [12] and on all other records and files of said action.

Dated at Nome, Alaska, this 15th day of June, 1915.

T. M. REED and
WILLIAM A. GILMORE,
Attorneys for Plaintiff.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, June 15, 1915. G. A. Adams, Clerk.

BE IT FURTHER REMEMBERED that the plaintiff herein filed his certain undertaking in the sum of \$1,000 with two good and sufficient sureties, said bond approved by the Court, in support of his motion for a temporary restraining order and an order to show cause and thereupon the Court entered its certain written order to show cause and restraining order in words and figures as follows, to wit:

[Title of Court and Cause.]

Restraining Order and Order to Show Cause.

This matter coming on for hearing *ex parte* before the Court on motion of the plaintiff's attorneys for an injunction *pendente lite* and for a temporary restraining order restraining and enjoining the defendants Joseph Bellevue and Hastings Creek Dredging Company, a corporation from paying or causing to be paid, any fund or purchase money to defendant H. M. Smith, or the defendant Sioux-Alaska Mining Company, or either of them, or to anybody else for and on their behalf for the purchase of that certain bucket dredge now lying and being on Hastings Creek in the Cape Nome Mining & Recording District, District of Alaska, and formerly owned by said Sioux-Alaska [13] Mining

Company, and the Court being otherwise fully advised in the premises, now ORDERS AND DIRECTS that you, the said Sioux-Alaska Mining Company, H. M. Smith, Joseph Belleview, and Hastings Creek Dredging Company, and each of you, show cause, if any you have, before the Court in open court at the courtroom of the courthouse at Nome, Alaska, at 10 o'clock A. M. on the 21st day of June 1915, why an injunction *pendente lite* should not be entered herein enjoining the defendants Joseph Belleview and the Hastings Creek Dredging Company from paying, or causing to be paid, any fund or sum of money or purchase price to the defendant H. M. Smith or the defendant Sioux-Alaska Mining Company for the sale and purchase of that certain bucket dredge now lying and being on Hastings Creek in the Cape Nome Mining & Recording District, District of Alaska, formerly owned by the said Sioux-Alaska Mining Company, and in the meantime you, the said Sioux-Alaska Mining Company, H. M. Smith, Joseph Belleview and Hastings Creek Dredging Company, and each of you, are hereby restrained from paying or causing to be paid or satisfied, or causing to be satisfied, the said sale and purchase price of the said dredge above the described and particularly are you, Joseph Belleview and Hastings Creek Dredging Company, and each of you, are hereby restrained until the further order of the court from paying, or causing to be paid, to H. M. Smith, or the Sioux-Alaska Mining Company, or either of them, or to anybody on their behalf, any of the purchase money contracted for, or to be paid

by you, for the purchase of the said bucket dredge formerly owned by the Sioux-Alaska Mining Company and now lying and being on Hastings Creek in the Cape Nome Mining & Recording District of Alaska.

Done in chambers this 15th day of June, 1915.

J. R. TUCKER,
District Judge.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome June 15, 1915. G. A. Adams, Clerk. [14]

United States of America,
District of Alaska,
Second Division,—ss.

I HEREBY CERTIFY that I received the annexed restraining order and order to show cause at Nome, Alaska, on the 15th day of June, 1915, and thereafter on the same day I served the same at Nome, Alaska, upon the Hastings Creek Dredging Company, by delivering and leaving with Joseph Belleview as president and manager of said company, a copy thereof.

And thereafter on the same day I served the same at Nome, Alaska, upon Joseph Belleview by delivering and leaving with him a copy thereof.

Returned this 16th day of June, 1915.

E. R. JORDAN,
United States Marshal.
By A. B. Miller,
Deputy.

Marshal's costs: 2 Services, \$12.00.

[Endorsed]: Filed in the office of the clerk of the District Court of Alaska, Second Division at Nome, June 16, 1915.

G. A. ADAMS,
Clerk.

BE IT FURTHER REMEMBERED that thereafter on the 21st day of June, 1915, the defendant Sioux-Alaska Mining Company, a corporation, filed a demurrer to plaintiff's complaint, which said demurrer is in words and figures as follows, to wit:

[Title of Court and Cause.]

Demurrer [of Sioux-Alaska Mining Co.].

Now comes the Sioux-Alaska Mining Company, a corporation, and demurs to the complaint herein on the ground and for the reason [15] that it appears on the face of the complaint,

First. That said Court has no jurisdiction of the subject matter of said action.

Second. That said complaint does not state facts sufficient to constitute a cause of action as against this demurring defendant.

G. J. LOMEN,
Attorneys for Defendant Sioux-Alaska Mining
Company, a Cor.

Service admitted June 21, 1915.

WILLIAM A. GILMORE,
Attys. for Plff.

[Endorsed]: Filed in the office of the clerk of the District Court of Alaska, Second Division, at Nome, June 21, 1915. G. A. Adams, Clerk.

BE IT REMEMBERED that thereafter and on

the 21st day of June, 1915, the defendant Joseph Belleview filed a demurrer to plaintiff's complaint, said demurrer being in words and figures as follows, to wit:

[Title of Court and Cause.]

Demurrer [of Joseph Belleview].

Now comes Joseph Belleview and demurs to the complaint herein on the ground and for the reason that it appears on the face of the complaint,

First. That said Court has no jurisdiction of the subject matter of said action. [16]

Second. That said complaint does not state facts sufficient to constitute a cause of action as against this demurring defendant.

G. J. LOMEN,

Attorney for Defendant Belleview.

Service admitted June 21, 1915.

WILLIAM A. GILMORE,

Atty. for Pltff.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division at Nome June 21, 1915. G. A. ADAMS, Clerk.

BE IT FURTHER REMEMBERED that on said 21st day of June, 1915, the defendants Sioux-Alaska Mining Company, a corporation, and Joseph Belleview, served and filed their certain written motion, which said motion was in words and figures as follows, to wit:

[Title of Court and Cause.]

Motion [to Vacate Order to Show Cause and Restraining Order].

Now comes the defendants Joseph Bellevue and Sioux-Alaska Mining Company, and move the Court that the order to show cause herein and the restraining order herein be vacated; that this motion is made on behalf of said moving defendants jointly and severally on the grounds of want of jurisdiction and that the complaint states no cause of action.

This motion is based upon the records and files herein and upon the affidavit of Joseph Bellevue, a copy of which is hereto [17] attached and made a part hereof.

Dated at Nome, Alaska, this 21st day of June, 1915.

G. J. LOMEN,
Attorney for Defendants Bellevue and Sioux-Alaska Mining Company.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, June 21, 1915. G. A. Adams, Clerk.

BE IT FURTHER REMEMBERED that on said 21st day of June, 1915, the said defendants Sioux-Alaska Mining Company and Joseph Bellevue served and filed the affidavit of defendant Joseph Bellevue, which said affidavit was in words and figures as follows, to wit:

[Title of Court and Cause.]

Affidavit [of Joseph Belleview].

Territory of Alaska,

Cape Nome Precinct,—ss.

Joseph Belleview being duly sworn on oath says: That he is one of the defendants above named; that on or about the 2d day of March, 1915, he bargained with one Henry M. Smith for the purchase of the dredge mentioned in the complaint in said action, and thereafter and before the commencement of this action paid to said Smith the sum of one thousand dollars as part consideration for said dredge, and made, executed and delivered to said Henry M. Smith his certain promissory notes aggregating the sum of six thousand dollars, said notes being made payable to said Henry M. Smith or order, at various times during the year 1915; that the first of said notes is due on the 15th day of August, 1915, and that said [18] other notes are due thereafter.

That said cash and notes are the consideration paid for said dredge, it being understood between said affiant and said Henry M. Smith that good title to said dredge should be delivered to affiant by the foreclosure of a mortgage then upon said dredge from W. H. Knowles and A. M. Hansen given to secure the notes of said Knowles and Hansen; that thereafter the said Knowles and Hansen mortgage was foreclosed by said Smith and said dredge is now in the possession of said affiant.

Affiant further states that during all his negotiations in the matter of the purchase of said dredge,

his dealings were exclusively made with said Henry M. Smith personally and individually, and that affiant was not in any manner informed or advised by said Smith, or otherwise, that said Smith was trustee or agent for the Sioux-Alaska Mining Company, or that said Sioux-Alaska Mining Company had any interest in said dredge or in the proceeds thereof, and that said purchase of said dredge and the delivery of said cash and notes were made in good faith and without any knowledge on part of affiant that Sioux-Alaska Mining Company had any interest in said dredge or in the proceeds thereof, and without any intent to hinder, delay or defraud any creditors of the said Sioux-Alaska Mining Company.

That said Henry M. Smith is a resident of Dell Rapids, South Dakota, and is not now within the Territory of Alaska.

That except as above, affiant is not indebted to said defendant Henry M. Smith.

JOSEPH BELLEVIEW.

Subscribed and sworn to before me this 18th day of June, 1915.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

(My commission expires on the 27th day of June, 1917.)

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division at Nome, June 21, 1915. G. A. Adams, Clerk, [19]

BE IT REMEMBERED that thereafter on the 21st day of June, 1915, the said matter came on for

hearing before the Court on the motion of the plaintiff for an injunction *pendente lite* and the motion of the defendants to vacate the restraining order and upon the demurrers filed by said defendants, and thereupon the plaintiff called the defendant Joseph Belleview as a witness, said witness being sworn and testified as follows:

Testimony of Joseph Belleview.

My name is Joseph Belleview. I am one of the defendants in this case. I am manager of the Hastings Creek Dredging Company. It is a corporation of South Dakota. I know the defendant H. M. Smith personally. His address is Dell Rapids, South Dakota. I made a deal with him on the 2d of March, of this year. I entered into a written agreement with him. This is the agreement we executed and delivered.

Mr. GILMORE.—I now offer the agreement in evidence.

The COURT.—It is admitted and marked Plaintiff's Exhibit "A."

(Said Exhibit being in words and figures as follows to wit:)

[Plaintiff's Exhibit "A"—Agreement.]

MEMORANDUM OF AGREEMENT made in duplicate this 2d day of March, A. D. 1915, by and between Henry M. Smith of Dell Rapids, South Dakota, party of the first part, and Joseph Belleview, of Nome, in the territory of Alaska, party of the second part, witnesseth as follows:

THAT, WHEREAS, the party of the first part is now the owner and holder of a certain chattel mort-

gage securing the payment of the sum of fifteen thousand dollars upon the terms therein mentioned, executed and delivered to him on December 15th, 1913, by W. H. Knowles and A. M. Hanson, and covering upon the following personal property described [20] in said chattel mortgage as follows, to wit: One two and one-half foot bucket gasoline or distillate dredge complete with all equipment and appurtenances belonging thereto and now therewith, and also all tools and machines and all oils and greases and supplies now therewith and all buildings, sheds and lumber now with said dredging outfit, said dredge and outfit now being situated on the Sioux-Alaska Mining Company's claims on Moss Gulch, Cape Nome Mining District, District of Alaska, and to be forthwith moved to the mortgagor's claims on Hastings Creek, being ten miles east of the City of Nome in said district aforesaid, and which said chattel mortgage was on February 24th, 1914, at 9-15 A. M. filed in the office of the recorder in and for Cape Nome precinct, District of Alaska, United States of America, as Instrument No. 60023: and,

WHEREAS, default has been made in the payment of certain of the payments to be made under the provisions of said chattel mortgage, and the said Henry M. Smith is about to commence foreclosure proceedings for the foreclosure of said mortgage as provided by law: and,

WHEREAS, if redemption is not made as provided by law by the said mortgagors, the said mortgagee will, as soon as possible, procure title to the

said mortgaged property, and in such event is desirous of selling and disposing of the same, and the party of the second part is desirous of purchasing the same:

NOW THIS INDENTURE WITNESSETH, that the said party of the first part agrees to and with the party of the second part as follows:

First. That he will prosecute with all possible dispatch with said foreclosure proceedings, and endeavor to procure title to said property so mortgaged as aforesaid.

Second. That immediately upon procuring said title he will convey to the party of the second part the said One two and one-half foot [21] bucket gasoline or distillate dredge complete with all equipments and appurtenances belonging thereto and now therewith and also all tools and machines, oils, greases and supplies now with said dredging outfit, and located on Grass Gulch, a tributary of Saunders Creek, a tributary of Hastings Creek, in Cape Nome Mining District, and in the District of Alaska aforesaid about 10 miles east of the City of Nome in said District.

In consideration of the foregoing covenants and conditions the party of the second part, his heirs or assigns, agrees to pay to the party of the first part, his heirs or assigns, the sum of Seven Thousand Dollars as follows: Five hundred dollars in cash, the receipt whereof is hereby acknowledged, five hundred dollars as soon as the party of the first part has procured title to said dredging outfit, and the conveyance aforesaid, one thousand dollars on

or before August 15th, 1915, one thousand dollars on or before September 1st, 1915, one thousand dollars on or before October 1st, 1915, one thousand five hundred dollars on or before November 1st, 1915, and one thousand dollars on or before December 1st 1915, all said payments, except the first two of five hundred dollars each, to draw interest at and after the rate of eight per cent per annum from the date of procuring title thereto and the conveyance aforesaid.

And the party of the second part, for himself, his heirs and assigns, further agrees to and with the party of the first part, his heirs and assigns, that upon the conveyance of the property aforesaid, the party of the second part will execute and deliver to the party of the first part, his promissory notes for the payments to be thereafter made as above stated, and upon the terms stated, and will at the same time execute and deliver his chattel mortgage upon the property so conveyed to secure the said payments, and each and all of them, said chattel mortgage to constitute a first lien against said personal property. [22]

And it is further agreed that if when the party of the first part commences foreclosure of said chattel mortgage, the said mortgagors therein, their heirs or assigns, should redeem said property from said property from said sale or foreclosure, that then and in that event, the party of the first part will return to the party of the second part any and all monies which he may have paid under the terms of this agreement.

IN WITNESS WHEREOF the parties to this agreement have hereunto set their hands and seals on the day and date first above written.

HENRY. M. SMITH. (Seal)

JOSEPH BELLEVIEW. (Seal)

Signed, sealed and delivered in the presence of:

C. H. SMITH.

N. C. KLEIN.

State of South Dakota,
County of Minnehaha,—ss.

On this 2d day of March, 1915, before me, the undersigned, a notary public in and for the above-named county and state, personally appeared Henry M. Smith and Joseph Bellview to me known to be the persons who are described in and who executed the foregoing instrument and acknowledged to me that they executed the same freely and to the intents and purposes therein expressed.

[Notarial Seal]

N. C. KLEIN,

Notary Public in and for Minnehaha County, South
Dakota.

State of South Dakota,
County of Minnehaha,—ss.

Henry M. Smith and Joseph Bellview being first duly sworn, each for himself, deposes and says: That they are the parties who executed the foregoing agreement or contract, and that they are absent [23] from the precinct where the property described therein is situated, being at Dell Rapids, Minnehaha County, South Dakota, and they do each for himself depose and say that said contract is executed in good faith for the purposes therein

stated, and without any design to hinder, delay or defraud creditors, or either of the parties thereto.

HENRY M. SMITH,
JOSEPH BELLVIEW.

Subscribed and sworn to before me this 2d day of March, 1915.

[Notarial Seal] N. C. KLEIN,
Notary Public in and for Minnehaha County South
Dakota.

Chicago, Illinois, March 4th, 1915.

FOR VALUE RECEIVED I hereby transfer, set over and assign to Hastings Creek Dredging Co. (a corporation) all my right, title, and interest in and to the above and foregoing contract between myself and Henry M. Smith of Dell Rapids, South Dakota.

JOSEPH BELLVIEW.

WITNESS.—(Continuing.) I paid Smith \$1000 cash. The agreement was with me personally. I was acting for the Hastings Creek Dredging Company, but took the contract in my own name. I was to pay \$6,000 more. The first payment is August 15th, 1915, and \$1,000 thereafter each month. It is my understanding the payments are to be made at the Miners and Merchants Bank in Nome. I do not know whether Mr. Smith is the trustee of the Sioux-Alaska Mining Company or not. I dealt with him irrespective of whether he was or not. I do not know whether or not Smith has been paid in full by the Sioux-Alaska Mining Company. I do not know of any other property

belonging to the Sioux-Alaska Mining Company. I did not bargain with the Sioux-Alaska Mining Company [24] for this property. I have received a bill of sale for the property but it is the understanding if I do not make the payments the property reverts back to Smith. I intend to pay the money and it doesn't make any difference to whom it is paid. I only intend to pay it once.

Cross-examination by Mr. LOMEN.

I do not know whether the notes express the payment to be made at the Miners and Merchants Bank in Nome, or not, but this is my understanding with Mr. Smith. This is my understanding by reason of conversation with him. He said he intended to send them to the bank for payment. The understanding is if I don't pay for the dredge Smith takes it back. I gave a mortgage back upon the property to Smith. The notes are secured by a mortgage. Mr. Smith is cashier of a bank at Dell Rapids. I suppose he is a man of wealth.

Redirect Examination by Mr. GILMORE.

I don't know whether he is a man of wealth or not. The amount of the mortgage is \$6,000. The mortgage has never been recorded at Nome as far as I know.

(Questions by the COURT.)

Q. Mr. Bellevue, do I understand you have already made a cash payment on this contract?

A. One thousand dollars.

Q. That has been paid over to Mr. Smith?

A. Yes, sir, \$1,000 cash.

Q. That has gone out of this place?

A. That is in his hands.

Q. Well, now, when is the first payment due?

A. August 15th for \$1,000.

And, thereafter, the matter was fully argued to the Court on the facts and the law and all of said motions and demurrers submitted [25] to the Court upon the foregoing records, files, and evidence and thereupon taken under advisement by the Court and reserved for decision.

BE IT FURTHER REMEMBERED that thereafter, and on the 3d day of July, 1915, the Court rendered and entered its decision denying plaintiff's motion for an injunction *pendente lite* and sustaining and granting the defendants' motion vacating the restraining order and sustaining the demurrers of the defendants to plaintiff's complaint, and thereupon the Court allowed the plaintiff an exception to each and all of said rulings and decisions.

BE IT FURTHER REMEMBERED that thereafter the Court made, entered and filed herein its judgment in favor of the defendants and against the plaintiff, which said judgment was in words and figures as follows, to wit:

[Title of Court and Cause]

Judgment.

The above-entitled action coming on for hearing this 3d day of July, 1915, on the complaint herein and the demurrers of the defendants Sioux-Alaska Mining Company and Joseph Bellevue, William A. Gilmore appearing for plaintiff and G. J. Lomen

appearing for said demurring defendants, and the court having on said day rendered its decision sustaining said demurrers, and the said plaintiff having refused and neglected to plead over and elected to stand on said complaint, now, therefore, it is **ORDERED AND ADJUDGED** that said action be, and the same is hereby dismissed as to said defendants Sioux-Alaska Mining Company and Joseph Bellevue, and that said defendants have judgment for their costs and disbursements [26] herein taxed at — Dollars (\$ —).

Done in open court this 10th day of July, 1915.

J. R. TUCKER,

District Judge.

[Endorsed]: Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, July 10, 1915. G. A. Adams, Clerk, by W. C. **Mc** Guire, Deputy.

To which judgment the plaintiff then and there excepted, which said exception was allowed by the Court.

[Order Settling and Allowing Bill of Exceptions.]

The foregoing **BILL OF EXCEPTIONS** contains all the evidence introduced at the hearings therein set forth and the said bill, having been served, filed and presented for settlement by the plaintiff within the time allowed by law and extensions thereof made by orders duly entered, and being found full, true and correct, is hereby settled and allowed.

Dated at Nome, Alaska, this 26th day of July, 1915.

J. R. TUCKER,

Judge of the District Court, District of Alaska,
Second Division. [27]

The foregoing is plaintiff's proposed BILL OF EXCEPTIONS in the suit therein above entitled.

Dated at Nome, Alaska, this 23d day of July, 1915.

T. M. REED and

WILLIAM A. GILMORE,

Attorneys for Plaintiff.

Service of receipt of a copy of the within BILL OF EXCEPTIONS admitted at Nome, Alaska, this 23d day of July, 1915.

G. J. LOMEN,

Attorney for defendants Sioux-Alaska, Mining Co.
and Joseph Belleview.

Service of copy of foregoing corrected and signed bill of exceptions admitted this 26th day of July, 1915.

G. J. LOMEN,

Attorney for Defendants Sioux-Alaska M. Co. and
Joseph Belleview. [28]

[Endorsed]: No. 2606. In the District Court for the District of Alaska, Second Division. Collin Murray Plaintiff vs. Sioux-Alaska Mining Co., a cor. et al. Defendants. Bill of Exceptions. Filed in the office of the clerk of the District Court of Alaska, Second Division, at Nome. Jul. 23, 1915. G. A. Adams, Clerk. By —————, Deputy. T. M. Reed and William A. Gilmore, Attorneys at law,

Nome, Alaska, Attorneys for Plaintiff. Refiled in the office of the clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By —, Deputy. [29]

In the District Court for the District of Alaska, Second Division.

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIoux-ALASKA MINING CO., a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO. a Corporation, and
JOSEPH BELLEVIEW,

Defendants.

**Assignment of Errors on Appeal from Order
Refusing Plaintiff's Motion for an Injunction
Pendente Lite.**

Now comes the plaintiff in the above-entitled action and assigns the following error as having been committed by the Court in making and entering its order denying an injunction *pendente lite* on the 3d day of July, 1915, upon which error said plaintiff will and does rely upon his appeal from said order to the United States Circuit Court of Appeals for the 9th Circuit, to wit:

The Court erred in making and entering its certain order on the 3d day of July, 1915, denying the plaintiff's motion for an injunction *pendente*

lite for the reason that said order so entered is contrary to law.

WHEREFORE plaintiff prays that said order refusing said injunction *pendente lite* so made and entered on the 3d day of July, 1915, be reversed and that the above entitled Court be compelled to enter the said order prayed for by plaintiff.

T. M. REED and

WILLIAM A. GILMORE,

Attorneys for Plaintiff and Appellant. [30]

Service of a copy of the foregoing Assignments of Error this 26th day of July, 1915, at — M., admitted.

G. J. LOMEN,

Attorney for Defs.

[Endorsed]: No. 2602. In the District Court for the District of Alaska, Second Division. Collin Murray Plaintiff vs. Sioux-Alaska Mining Co., a cor. et al. Defendants. Assignment of Errors on Appeal from Order Refusing Injunction *Pendente Lite*. Filed in the office of the clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26th, 1915. G. A. Adams, Clerk. By W. C. McG., Deputy. T. M. Reed and William A. Gilmore, Attorneys at law Nome, Alaska. Attorneys for Plaintiff. [31]

In the District Court for the District of Alaska, Second Division.

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIOUX-ALASKA MINING COMPANY, a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO., a Corporation, and
JOSEPH BELLEVIEW,

Defendants.

**Assignment of Error on Appeal from Order
Vacating the Plaintiff's Restraining Order.**

Now comes the plaintiff in the above-entitled action and assigns the following error as having been committed by the Court in making and entering its order granting and sustaining the defendants' motion vacating and setting aside the restraining order therefore granted in said action in favor of the plaintiff, upon which error said plaintiff will and does rely upon his appeal from said order to the United States Circuit Court of Appeals for the 9th Circuit, to wit:

The Court erred in making and entering its certain order on the 3d day of July, 1915, sustaining the defendants' motion in vacating and setting aside the temporary restraining order heretofore issued in the above-entitled action on behalf of the plaintiff for the reason that the said order so entered is contrary to law.

WHEREFORE plaintiff prays that said order so made and entered on the said 3d day of July, 1915, be reversed and that said restraining order theretofore issued restored in full force and effect.

T. M. REED and

WILLIAM A. GILMORE,

Attorneys for Plaintiff and Appellant. [32]

Service of a copy of the foregoing assignment of errors this 26th day of July, 1915, at — M., admitted.

G. J. LOMEN,

Attorney for Defs.

[Endorsed]: No. 2602. In the District Court for the District of Alaska, Second Division. Collin Murray, Plaintiff, vs. Sioux-Alaska Mining Co., a Cor., et al., Defendants. Assignment of Error on Appeal from Order Vacating Restraining Order. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By W. C. McG., Deputy. T. N. Reed and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [33]

*In the District Court for the District of Alaska,
Second Division.*

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIoux-ALASKA MINING CO., a Corporation,
R. M. SMITH, HASTINGS CREEK
DREDGING CO., a Corporation, and JO-
SEPH BELLEVIEW,

Defendants.

Assignment of Errors on Appeal from Final Decree.

Now comes the plaintiff in the above-entitled action and assigns the following errors as having been committed by the Court in making and entering its final decree in favor of the defendants and against the plaintiff on the 10th day of July, 1915, upon which errors said plaintiff will and does rely upon his appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

1. The Court erred in making and entering its certain order granting the defendants' motion to vacate the temporary restraining order heretofore issued in said cause.

2. The Court erred in making and entering its order refusing and denying the plaintiff an injunction *pendente lite* in said cause.

3. The Court erred in making and entering its order sustaining the demurrer of the defendant Sioux-Alaska Mining Co., a corporation, to the plaintiff's complaint upon the 3d day of July, 1915.

4. The Court erred in making and entering its order sustaining the demurrer of the defendant Joseph Belleview to plaintiff's complaint on the 3d day of July, 1915.

5. The Court erred in making and entering said final decree in favor of the defendants and against the plaintiff on said 10 day of July, 1915. [34]

WHEREFORE plaintiff prays that said final decree so made and entered on said 10th day of July, 1915, be reversed and the trial court be remanded to restore said cause and compel the defendants to

answer the complaint of the plaintiff, and enter said injunction *pendente lite* and that the plaintiff be restored to all things which he has lost thereby.

T. M. REED and

WILLIAM A. GILMORE,

Attorneys for Plaintiff and Appellant.

Service of a copy of the foregoing Assignments of Error this 26th day of July, 1915, at — M., admitted:

G. J. LOMEN,

Attorney for Defs.

[Endorsed]: No. 2602. In the District Court for the District of Alaska, Second Division. Collin Murray, Plaintiff, vs. Sioux-Alaska Mining Co., a Cor., et al., Defendants. Assignment of Errors on Appeal from Final Decree. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By W. C. McG., Deputy. T. M. Reed and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorney for Plaintiff. [35]

*In the District Court for the District of Alaska,
Second Division.*

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIOUX-ALASKA MINING CO., a Corporation, H.
M. SMITH, HASTINGS CREEK DREDG-
ING CO., a Corporation, and JOSEPH
BELLEVIEW,

Defendants.

**Petition for Appeal From Order Denying Plaintiff's
Motion for an Injunction Pendente Lite.**

Comes now Collin Murray, plaintiff herein, and believing himself aggrieved by that certain interlocutory order denying and refusing an injunction *pendente lite* herein made and entered on the 3d day of July, 1915, hereby appeals from said order denying and refusing said injunction to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that said appeal be allowed and that an order be made fixing the amount of bond for costs and supersedeas on appeal to be given by the appellant.

Dated at Nome, Alaska, this 26th day of July, 1915.

T. M. REED, and

WILLIAM A. GILMORE,

Attorneys for Plaintiff and Appellant. [36]

Service of a copy of the foregoing Petition for Appeal this 26th day of July, 1915, at — M., admitted.

G. J. LOMEN,

Attorney for Defs.

[Endorsed]: No. 2602. In the District Court for the District of Alaska, Second Division. Collin Murray, Plaintiff, vs. Sioux-Alaska Mining Co., a Cor., at al., Defendants. Petition for Appeal from Order Denying Plaintiff's Motion for an Injunction *Pendente Lite*. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By W.

C. McG., Deputy. T. M. Reed and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [37]

*In the District Court for the District of Alaska,
Second Division.*

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIOUX-ALASKA MINING CO., a Corporation, H.
M. SMITH, HASTINGS CREEK DREDG-
ING CO., a Corporation, and JOSEPH.
BELLEVIEW,

Defendants.

**Petition for Appeal from Order Vacating the
Temporary Restraining Order.**

Comes now Collin Murray, plaintiff herein, and believing himself aggrieved by that certain interlocutory order vacating the temporary restraining order heretofore granted, said order being made and entered herein on the 3d day of July, 1915, hereby appeals from said order vacating said temporary restraining order to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that said appeal be allowed and that on order be made fixing the amount of bond for costs and supersedeas on appeal to be given by the appellant.

Dated at Nome, Alaska, this 26th day of July, 1915.

T. M. REED and

WILLIAM A. GILMORE,

Attorneys for Plaintiff and Appellant. [38]

Service of a copy of the foregoing Petition for Appeal this 26th day of July, 1915, at — M., admitted.

G. J. LOMEN,

Attorney for Defs.

[Endorsed]: No. 2602. In the District Court for the District of Alaska, Second Division. Collin Murray, Plaintiff, vs. Sioux-Alaska Mining Co., a Cor., et al., Defendants. Petition for Appeal from Order Vacating the Temporary Restraining Order. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By W. C. McG., Deputy. T. M. Reed and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [39]

*In the District Court for the District of Alaska,
Second Division.*

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIoux-ALASKA MINING CO., a Corporation, H.
M. SMITH, HASTINGS CREEK DREDG-
ING CO., a Corporation, and JOSEPH
BELLEVIEW,

Defendants.

Petition for Appeal From Final Decree.

Comes now Collin Murray, plaintiff herein, and believing himself aggrieved by that certain final decree herein made and entered on the 10th day of July, 1915, hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that said appeal be allowed and that an order be made fixing the amount of bond for costs and supersedeas on appeal to be given by the appellant; and plaintiff further prays that the court enter its order herein granting a stay of execution and that pending and during the said final determination of said appeal that all proceedings and orders heretofore entered and made, and the property restrained, remain in *statu quo*.

Dated at Nome, Alaska, this 26th day of July, 1915.

T. M. REED and
WILLIAM A. GILMORE,

Attorneys for Plaintiff and Appellant. [40]

Service of a copy of the foregoing Petition for Appeal this 26th day of July, 1915, at — M., admitted.

G. J. LOMEN,
Attorney for Defs.

[Endorsed]: No. 2602. In the District Court for the District of Alaska, Second Division. Collin Murray, Plaintiff, vs. Sioux Alaska Mining Co., a cor., et al., Defendants. Petition for Appeal from Final Decree. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By W. C. McG.,

Deputy. T. M. Reed and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [41]

*In the District Court for the District of Alaska,
Second Division.*

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIOUX-ALASKA MINING CO., a Corporation, H.
M. SMITH, HASTINGS CREEK DREDG-
ING CO., a Corporation, and JOSEPH
BELLEVIEW,

Defendants.

**Order Allowing Appeals and Fixing Amount of
Bond.**

This matter coming on before the Court for an order allowing an appeal from an interlocutory order vacating and setting aside a temporary restraining order in the above entitled action, and from an order refusing an injunction *pendente lite* and from a final decree heretofore entered in the above entitled action, and the Court being fully advised in the premises, it is now ORDERED that the said appeals from said order vacating the temporary restraining order and from said order refusing and denying the injunction *pendente lite* and from the said final decree as prayed for in said petitions for appeals, all and the same are each and all hereby allowed as prayed for by the plaintiff.

IT IS FURTHER ORDERED that an undertaking on appeal to act as a cost bond and stay and supersedeas bond be given by the plaintiff in the sum of One Thousand (\$1,000) Dollars to the defendants to the effect that the plaintiff shall prosecute said appeals to effect and answer for all costs and damages if he fail to make good his said appeal. [42]

IT IS FURTHER ORDERED that upon the filing of said bond the same shall act as a stay and supersedeas bond.

Done in open court at Nome, Alaska, this 26th day of July, 1915.

J. R. TUCKER,
District Judge.

[Endorsed]: No. 2602. In the District Court for the District of Alaska, Second Division. Collin Murray, Plaintiff, vs. Sioux-Alaska Mining Co., a Cor., et al., Defendants. Order Allowing Appeals and Fixing Amount of Bond. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By W. C. McG., Deputy. T. M. Reed and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [43]

In the District Court for the District of Alaska, Second Division.

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIOUX-ALASKA MINING CO., a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO., a Corporation and
JOSEPH BELLEVIEW,

Defendants.

Undertaking for Costs on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we Collin Murray as principal, and Chas. H. Milot and F. A. Daniels as sureties are held firmly bound unto Sioux-Alaska Mining Co., a corporation, H. M. Smith, Hastings Creek Dredging Co., a corporation, and Joseph Belleview, the defendants in the above-entitled action, in the sum of One Thousand (\$1,000) Dollars, lawful money of the United States of America for the payment of which well and truly to be made we bind ourselves and our, and each of our heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with our seals and dated at Nome, Alaska, this 26th day of July, 1915.

WHEREAS an order has been made and entered in the above-entitled action allowing appeals of the plaintiff to the United States Circuit Court of Appeals for the Ninth Circuit to certain interlocutory

orders made and entered on the 3d day of July, 1915, and from a final decree made and entered on the 10th day of July, 1915, and citations are about to issue citing and admonishing the said defendants to be and appear at a term of said court of appeals to be held in the City of San Francisco, State of California, and show cause why said order should not be reversed: [44]

NOW, THEREFORE, if the appellant, Collin Murray shall prosecute said appeals to effect and answer all costs and damages if he fails to sustain and make good his appeals and shall pay, or cause to be paid, to said defendants, their heirs, executors, administrators and assigns, all damages which they shall suffer by reason of said appeals, or any or either of them, if the same should be wrongful or without sufficient cause, and shall pay, or cause to be paid to the said defendants, their heirs, executors, administrators and assigns all damages which they, or either of them, shall suffer by reason of the said order of said court directing all proceedings and property restrained to remain in *statu quo*, then this obligation to be void, otherwise to remain in full force and effect.

COLLIN MURRAY, (Seal)
Principal.

By WILLIAM A. GILMORE,
His Attorney.

CHAS. H. MILOT, (Seal)
F. A. DANIELS, (Seal)
Sureties.

United States of America,
Territory of Alaska,—ss.

Chas. H. Milot and F. A. Daniels, sureties in the above undertaking, being duly sworn, each for himself and not one for the other, deposes and says:

That he is a resident of the Territory of Alaska; that he is not a counselor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; that he is worth the sum of One Thousand (\$1,000) Dollars over and above all just debts and liabilities and exclusive of property exempt from execution.

CHAS. H. MILOT,

F. A. DANIELS. [45]

Subscribed and sworn to before me this 26th day of July, 1915.

[Notarial Seal] WILLIAM A. GILMORE,
Notary Public for the Territory of Alaska, Residing
at Nome.

(My commission expires July 27th, 1915.)

The foregoing bond is hereby approved this 26th day of July, 1915, in open court.

J. R. TUCKER,

District Judge.

[Endorsed]: No. 2602. In the District Court for the District of Alaska Second Division. Collin Murray, Plaintiff vs. Sioux-Alaska Mining Co., a Cor., et al. Defendants. Undertaking for Costs on Appeal. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By W. C. McG.,

Deputy. T. M. Reed and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [46]

In the District Court for the District of Alaska, Second Division.

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIoux-ALASKA MINING CO., a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO., a Corporation and
JOSEPH BELLEVIEW,

Plaintiff,

Order Enlarging Time [60 Days] to File Record and Docket Case.

On motion of counsel for Collin Murray, appellant in the above-entitled suit, it is hereby ORDERED that the time for filing and docketing the transcript and record in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, upon appeals from two interlocutory orders and from an appeal from the final decree heretofore entered, be, and the same is hereby enlarged sixty (60) days after the return day of the citations issued on said appeals.

Done in open court at Nome, Alaska, this 26th day of July, 1915.

J. R. TUCKER,
District Judge.

Service of the foregoing order admitted at Nome, Alaska, this 26th day of July, 1915.

G. J. LOMEN,
Attorney for Defendants Sioux-Alaska, Mining Co.,
a Cor., and Joseph Belleview. [47]

[Endorsed]: No. 2602. In the District Court for the District of Alaska, Second Division. Collin Murray, Plaintiff, et al. Defendants. Order Enlarging Time to File Record and Docket Case. Filed in the Office of the Clerk of the District Court of Alaska Second Division at Nome. Jul. 26, 1915. G. A. Adams, Clerk. By W. C. McG., Deputy. T. M. Reed and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [48]

In the District Court for the District of Alaska, Second Division.

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIOUX-ALASKA MINING CO., a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO., a Corporation and
JOSEPH BELLEVIEW,

Defendants.

United States of America,
Territory of Alaska,—ss.

**Citation on Appeal from Order Refusing an
Injunction Pendente Lite.**

The President of the United States of America, to
Sioux-Alaska Mining Co., a Corporation, H. M.
Smith, Hastings Creek Dredging Co., a Corpo-
ration, and Joseph Belleview, the Above-named
Defendants, GREETING:

You, and each of you, are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, State of California, on the 24th day of August, 1915, pursuant to an order allowing an appeal filed in the office of the clerk of the District Court for the District of Alaska, Second Division, from a certain interlocutory order refusing an injunction *pendente lite* made and entered in said court on the 3d day of July, 1915, in that certain suit wherein you, the said Sioux-Alaska Mining Co., a corporation, H. M. Smith, Hastings Creek Dredging Co., a corporation, and Joseph Belleview are defendants, and Collin Murray is plaintiff, to show cause, if any there be, why the said order refusing on injunction *pendente lite*, as in said order allowing the appeal mentioned, should not be reversed and why speedy justice should not be done to the parties in that behalf. [49]

WITNESS the Honorable EDWARD D.
WHITE, Chief Justice of the Supreme Court of

the United States, this 26th day of July, 1915.

[Seal]

J. R. TUCKER,

Judge of the District Court for the District of
Alaska, Second Division.

Attest my hand and seal of the United States
District Court for the District of Alaska, Second Di-
vision, at the clerk's office at Nome, Alaska, this 26th
day of July, 1915.

G. A. ADAMS, Jr.,

Clerk of the United States District Court for the
District of Alaska Second Division.

Service of the foregoing citation is hereby ad-
mitted at Nome, Alaska, this 26th day of July, 1915..

G. J. LOMEN,

Attorney for Defendants Sioux-Alaska Mining Co.,
a Cor., and Joseph Belleview. [50]

*In the District Court for the District of Alaska,
Second Division.*

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIoux-ALASKA MINING CO., a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO., a Corporation, and
JOSEPH BELLEVIEW,

Defendants.

**Citation on Appeal from Order Vacating
Restraining Order.**

United States of America,
Territory of Alaska,—ss.

The President of the United States of America, to
Sioux-Alaska Mining Co., a Corporation, H. M.
Smith, Hastings Creek Dredging Co., a Corpo-
ration, and Joseph Belleview, the Above-named
Defendants, GREETING:

You and each of you are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held the city of San Francisco, State of California, on the 24th day of August, 1915, pursuant to an order allowing an appeal filed in the office of the clerk of the District Court for the District of Alaska, Second Division, from a certain interlocutory order vacating the temporary restraining order heretofore entered in the above-entitled action, which said interlocutory order was made and entered in said court on the 3d day of July, 1915, in that certain suit wherein you the said Sioux-Alaska Mining Company, a corporation, H. M. Smith, Hastings Creek Mining Co., a corporation, and Joseph Belleview are defendants, and Collins Murray is plaintiff, to show cause if any there be why the said order vacating the temporary restraining order, as in said order allowing the appeal [51, 52] mentioned, should not be reversed and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 26th day of July, 1915.

J. R. TUCKER,
Judge of the District Court for the District of Alaska, Second Division.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Division, at the clerk's office at Nome, Alaska, this 26th day of July, 1915.

[Seal] G. A. ADAMS,
Clerk of the United States District Court for the District of Alaska Second Division.

Service of the foregoing citation is hereby admitted at Nome, Alaska, this 26th day of July, 1915..

G. J. LOMEN,
Attorney for Defendants Sioux-Alaska Mining Co., a Cor., and Joseph Belleview. [53, 54]

*In the District Court for the District of Alaska
Second Division.*

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIoux-ALASKA MINING CO., a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO., a Corporation, and
JOSEPH BELLEVIEW,

Defendants.

Citation on Appeal from Final Decree.

United States of America,
District of Alaska,—ss.

The President of the United States of America, to
Sioux-Alaska Mining Co., a Corporation, H. M.
Smith, Hastings Creek Dredging Co., a corpo-
ration, and Joseph Belleview, the Above-named
Defendants, GREETING:

You and each of you are hereby cited and admon-
ished to be and appear at the United States Circuit
Court of Appeals for the Ninth Circuit, to be held
at the city of San Francisco, State of California,
on the 24th day of August, 1915, pursuant to an
order allowing an appeal filed in the office of the
clerk of the District Court for the District of
Alaska, Second Division, from a certain final decree
made, filed and entered in said court on the 10th
day of July, 1915, in that certain suit wherein you
Sioux-Alaska Mining Co., a corporation, H. M. Smith,
Hastings Creek Dredging Co., a corporation, and
Joseph Belleview are defendants, and Collin Murray
is plaintiff, to show cause, if any there be, why the
said final decree rendered against the said Collin
Murray as in said order allowing the appeal men-
tioned, should not be reversed, and why speedy jus-
tice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 26th day of July, 1915.

J. R. TUCKER,
Judge of the District Court for the District of Alaska, Second Division.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Division, at the clerk's office at Nome, Alaska, this 26th day of July, 1915.

[Seal] G. A. ADAMS,
Clerk of the United States District Court for the District of Alaska Second Division.

Service of the foregoing citation is hereby admitted at Nome, Alaska, this 26th day of July, 1915..

G. J. LOMEN,
Attorney for Defendants Sioux-Alaska Mining Co.,
and Joseph Belleview. [56]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court for the District of Alaska,
Second Division.*

No. 2602.

COLLIN MURRAY,

Plaintiff,

vs.

SIOUX-ALASKA MINING CO., a Corporation,
H. M. SMITH, HASTINGS CREEK
DREDGING CO. a Corporation, and
JOSEPH BELLEVIEW,

Defendants.

I, G. A. Adams, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages from 1 to 48, both inclusive, are a true and exact transcript of the court Minutes of July 3, 1915, Bill of Exceptions, Order Settling and Allowing Bill of Exceptions, Assignment of Errors on Appeal from Order Refusing Plaintiff's Motion for an Injunction *pendente lite*, Assignment of Errors on Appeal from Order Vacating the Plaintiff's Restraining Order, Assignment of Errors on Appeal from Final Decree, Petition for Appeal from Order Denying Plaintiff's Motion for an Injunction *pendente lite*, Petition for Appeal from Order Vacating the Temporary Restraining Order, Petition for Appeal from Final Decree, Order Allowing Appeals, and Fixing Amount of Bond, Undertaking for Costs on Appeal and Order Enlarging Time to File Record and Docket Case, in the case of Collin Murray, Plaintiff, vs. Sioux-Alaska Mining Co., a corporation, et al., Defendants, No. 2602-Civil, this court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Citation on Appeal from Order Refusing on Injunction *pendente lite*, Citation on Appeal from Order Vacating Restraining Order and Citation [58] on Appeal from Final Decree in the above-entitled cause are attached to this transcript.

Cost of transcript, \$20.30, paid by William A. Gilmore, of attorneys for plaintiff.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 11th day of August, 1915.

[Seal]

G. A. ADAMS,
Clerk. [59]

[Endorsed]: No. 2655. United States Circuit Court of Appeals for the Ninth Circuit. Collin Murray, Appellant, vs. Sioux-Alaska Mining Company, a Corporation, H. M. Smith, Hastings Creek Dredging Company, a Corporation, and Joseph Bellevue, Appellee. Transcript of Record. Upon Appeals from the United States District Court for the District of Alaska, Second Division.

Filed September 20, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.